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DEC 15 2004

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Paper No. 21

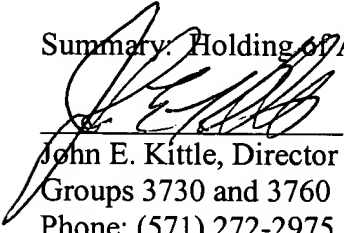
In re Application of	:	DECISION ON PETITION
George M. Johnson et al	:	TO WITHDRAW
Serial No. : 09/702,002	:	HOLDING OF
Filed : October 30, 2000	:	ABANDONMENT
For : Method and Device for Treating Gastroesophageal	:	
Reflux Disease	:	

This is a decision on petitioner's request filed March 21, 2003 to review the holding of abandonment mailed February 6, 2003, for failure to respond to the Office action mailed July 31, 2002. The basis for the request is that applicant did not receive the communication mailed July 31, 2002. There is no fee required for this petition.

In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The request filed March 21, 2003 includes elements (1) and (2) but not element (3). Although an inspection of the file reveals that a change of address/power of attorney was made, presumably as a result of a request filed by assignee (no copy of the request is in the file), petitioner has provided a declaration signed by Mr. James W. Hill, M.D., applicant's former representative attesting to the fact that no such request was filed for the instant case. Accordingly, the communication in question was mailed to an incorrect address, and submission of element (3) is not necessary and will not be required. The request is therefore GRANTED and the holding of abandonment withdrawn. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner to process a revocation of power of attorney filed September 2, 2004 and to have the Office action of July 31, 2002 re-mailed setting forth a new time period for response.

Summary: Holding of Abandonment Withdrawn.


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ak/11/01/04